

ENVIRONMENTAL QUALITY

CHAPTER 50

SOLID WASTE MANAGEMENT

Sub-Chapter 5

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Sub-Chapter 5

Refuse Disposal

17.50.501 PURPOSE AND APPLICABILITY (1) The purpose of this subchapter is to provide uniform standards governing the storage, treatment, recycling, recovery, and disposal of solid waste.

(2) The rules in this subchapter are adopted to discharge the department's responsibilities under Title 75, chapter 10, part 2, MCA, "The Montana Solid Waste Management Act", by adopting rules governing solid waste management systems.

(3) These rules apply to owners and operators of solid waste management systems, except as otherwise specifically provided in this subchapter.

(4) The effective dates of ARM 17.50.506 and 17.50.511(1)(e) and (g) are extended until April 9, 1994, as they apply to existing landfill units and lateral expansions to existing units that meet the following requirements:

(a) the unit disposed of less than 100 tons per day of solid waste between October 9, 1991, and October 9, 1992;

(b) the unit does not dispose of more than an average per month of 100 tons per day of solid waste between October 9, 1993 and April 9, 1994; and

(c) the unit is not on the national priorities list (NPL) as found in 40 CFR, part 300, appendix B.

(5) Existing MSWLF units that meet the requirements for the small community exemption found in ARM 17.50.506(16) or the requirements of (4) of this rule that receive waste after October 9, 1993, and stop receiving waste prior to April 9, 1994, are only subject to the final cover requirements found in ARM 17.50.530. Final cover must be installed by October 9, 1994. Owners or operators that fail to complete cover installation by October 9, 1994, are subject to all of the requirements of this subchapter unless otherwise specified. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; AMD, 1993 MAR p. 2672, Eff. 11/11/93; TRANS, from DHES, 1995 MAR p. 2253.)

17.50.502 DEFINITIONS In addition to the terms defined in 75-10-203, MCA, as used in this subchapter, the following terms shall have the meanings or interpretations shown below:

(1) "Act" means the Montana Solid Waste Management Act, 75-10-201 through 75-10-233, MCA.

(2) "Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with ARM 17.50.530.

(3) "Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with ARM 17.50.530.

(4) "Airport" means a public use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(5) "Aquifer" means any geologic formation, group of formations, or part of a formation capable of yielding significant quantities of ground water to wells or springs.

(6) "Clean fill" means soil, dirt, sand, gravel, rocks and rebar-free concrete, emplaced free of charge to the person placing the fill, in order to adjust or create topographic irregularities for agricultural or construction purposes.

(7) "Closed unit" means any solid waste disposal unit, trench, cell or area that no longer receives solid waste and has been closed in accordance with department rules.

(8) "Closure" means the process by which an owner or operator of a facility closes all or part of a facility in accordance with a department approved closure plan and all applicable closure requirements specified in ARM 17.50.530.

(9) "Compacted soil liner" means recompacted native or amended soil with a minimum thickness of 3 feet with adequate moisture content and compaction to achieve a hydraulic conductivity of less than or equal to 1×10^{-7} cm/sec.

(10) "Commercial waste" means all types of solid wastes generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, and non-processing wastes such as office and packing wastes generated at industrial facilities.

(11) "Conditionally exempt small quantity generator wastes (CESQG wastes)" means wastes from a generator defined in ARM 17.54.401(4)(c).

(12) "Construction and demolition waste" means the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures, once municipal, household, commercial and industrial wastes have been removed.

(13) "Container site" means a solid waste management facility, generally open to the public, for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total

capacity of not more than 50 cubic yards.

(14) "Cost" means all expenses associated with the permitting, licensing, design, construction, environmental compliance, operation, maintenance, ground water monitoring, corrective action, closure and post-closure care of any facility.

(15) "Director" means the chief administrative officer of the department of environmental quality.

(16) "Disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

(17) "EPA" means the United States environmental protection agency.

(18) "Existing unit" means any solid waste disposal unit that is receiving solid waste as of October 9, 1993. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

(19) "Facility" means a manufacturing, processing or assembly establishment; a transportation terminal; or a treatment, storage or disposal unit operated by a person at one site. The term includes all contiguous land and structures, other appurtenances, and improvements on the land (licensed or unlicensed) used for the storage, treatment or disposal of solid waste.

(20) "Floodplain" means the lowland and relatively flat areas adjoining inland waters, including flood-prone areas, that are inundated by the 100-year flood.

(21) "Generation" means the act or process of producing waste materials.

(22) "Ground water class" means a ground water quality classification established in ARM 17.30.1002.

(23) "Ground water quality standards" means the standards for ground water quality set forth in ARM 17.30.1003.

(24) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of the federal Resource Conservation and Recovery Act (RCRA). The term includes, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment.

(25) "Infectious waste" means waste defined in 75-10-1003(4), MCA.

(26) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

(27) "Landfill" means an area of land or an excavation where wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

(28) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing disposal unit.

(29) "Leachate" means a liquid which has contacted, passed through, or emerged from solid waste and contains soluble, suspended, or miscible materials removed from the waste.

(30) "Liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846).

(31) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and atmospheric pressure.

(32) "Maximum horizontal acceleration" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(33) "Municipal solid waste landfill unit (or MSWLF unit)" means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(34) "New unit" means any solid waste disposal unit that has not received waste prior to October 9, 1993.

(35) "Open burning" means the combustion of solid waste without:

- (a) control of combustion air to maintain adequate temperature for efficient combustion;

- (b) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

- (c) control of the emission of the combustion products.

(36) "Operator" means the person responsible for the overall operation of a facility or part of a facility.

(37) "Owner" means the person who owns a facility or part of a facility.

(38) "PCB wastes" means those polychlorinated biphenyls or PCB items subject to regulation under 40 CFR Part 761.

(39) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(40) "Refuse container" means a portable facility used for the temporary storage of solid waste. Containers are emptied periodically and the solid waste is then taken to a disposal or resource recovery facility.

(41) "Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3, that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in 40 CFR 261.5.

(42) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(43) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(44) "Saturated zone" means that part of the earth's crust in which all voids are filled with water.

(45) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

(46) "Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during the preliminary treatment of domestic sewage in a treatment plant.

(47) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(48) "Solid waste management system" as defined in 75-10-203, MCA, means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. In

addition, for the purposes of this definition, the department does not consider a container site to be a component of a solid waste management system.

(49) "Structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of a solid waste management system that is necessary for protection of human health and the environment.

(50) "Surface impoundment" means a facility or part of a facility that is a natural topographic depression, human made excavation, or diked area formed primarily of earthen materials (although it may be lined with human made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(51) "Transfer station" means a solid waste management facility that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles (public, commercial or private) and placed in other transportation units for movement to another solid waste management facility.

(52) "Unit" means a discrete area of land or an excavation used for the landfilling or other disposal of solid waste.

(53) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(54) "Waste" means useless, unwanted, or discarded materials in any physical form, i.e., solid, semi-solid, liquid, or gaseous. The term is not intended to apply to by-products or materials which have economic value and may be used by the person producing the material or sold to another person for resource recovery or use in a beneficial manner.

(55) "Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

(56) "Waste pile" or "pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

(57) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff.

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10/9/93; AMD, 1993 MAR p. 2784, Eff. 11/25/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97.)

17.50.503 WASTE GROUPS (1) Solid wastes are grouped based on physical and chemical characteristics which determine the degree of care required in handling and disposal and the potential of the wastes for causing environmental degradation or public health hazards. Solid wastes are categorized into 3 groups:

(a) Group II wastes include decomposable wastes and mixed solid wastes containing decomposable material but exclude regulated hazardous wastes. Examples include, but are not limited to, the following:

(i) municipal and household solid wastes such as garbage and putrescible organic materials, paper, cardboard, cloth, glass, metal, plastics, street sweepings, yard and garden wastes, digested sewage treatment sludges, water treatment sludges, ashes, dead animals, offal, discarded appliances, abandoned automobiles, and hospital and medical facility wastes, provided that infectious wastes have been rendered non-infectious to prevent the danger of disease; and

(ii) commercial and industrial solid wastes such as packaging materials, liquid or solid industrial process wastes which are chemically or biologically decomposable, crop residues, manure, chemical fertilizers, and emptied pesticide containers which have been triple rinsed or processed by methods approved by the department.

(b) Group III wastes include wood wastes and non-water soluble solids. These wastes are characterized by their general inert nature and low potential for adverse environmental impacts. Examples include, but are not limited to, the following:

(i) inert solid waste such as unpainted brick, dirt, rock and concrete;

(ii) clean, untreated, unglued wood materials, brush, unpainted or untreated lumber, and vehicle tires; and

(iii) industrial mineral wastes which are essentially inert and non-water soluble and do not contain hazardous waste constituents.

(c) Group IV wastes include construction and demolition wastes, and asphalt, except regulated hazardous wastes.

(2) Clean fill is not regulated under this subchapter. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97.)

17.50.504 DISPOSAL FACILITY CLASSIFICATIONS (1) Disposal facilities are classified according to their respective abilities to handle various types of solid waste. Systems of acceptable disposal may entail containment of waste with assured protection against leachate migration or may take advantage of natural treatment processes such as evaporation, chemical and microbiological degradation, filtration, adsorption and attenuation. Solid waste management facilities may involve ponds, pits, lagoons, land spreading areas, impoundments, or landfills. Although facilities are broadly classified as to the solid waste groups they may accept, specific restrictions may be placed by the department on individual disposal units or disposal areas. As an example, many Class II landfills may not be acceptable places for the disposal of Group II liquids or sludges. Such restrictions, if any are warranted, shall be specified on the solid waste management system license.

(2) There are 3 types of disposal facilities: Class II, Class III, and Class IV.

(a) Generally, facilities licensed to operate as Class II solid waste management systems are capable of receiving Group II, Group III, and Group IV wastes but not regulated hazardous wastes. Group III and Group IV waste may be managed in Class II units or separate units at the facility. Household waste, although it may contain some household hazardous waste or other non-regulated hazardous waste, may be disposed of at Class II landfills.

(b) Facilities licensed as Class III landfills may accept only Group III wastes.

(c) Facilities licensed as Class IV landfills may accept only Group III or Group IV wastes. Conditionally exempt small quantity generator hazardous waste that is generated as a part of a construction or demolition project and that cannot practicably be removed from the construction and demolition waste may be included in waste disposed of in Class IV units.

(History: 75-10-204, MCA; IMP, 75-10-204, MCA, Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97.)

17.50.505 STANDARDS FOR SOLID WASTE MANAGEMENT FACILITIES

(1) There are locational and design requirements with which both facility classifications must comply. In addition, there are other requirements that are applicable only to specific classifications. The general locational requirements that all facilities must meet include:

(a) a sufficient acreage of suitable land must be available for solid waste management;

(b) where public use or year round access is contemplated, access roads and bridges must be capable of supporting loaded vehicles during all types of weather;

(c) facilities may not be located in a 100 year floodplain;

(d) facilities may be located only in areas which will prevent the pollution of ground and surface waters and public and private water supply systems;

(e) drainage structures must be installed where necessary to prevent surface runoff from entering waste management areas;

(f) where underlying geological formations contain rock fractures or fissures which may lead to pollution of the ground water or areas in which springs exist that are hydraulically connected to a proposed disposal facility, only Class III disposal facilities may be approved; and

(g) facilities must be located to allow for reclamation and reuse of the land.

(2) Special requirements include:

(a) Facilities licensed and operated as Class II landfills must confine solid waste and leachate to the disposal facility, unless department approval is obtained for treatment at another facility. If there is a potential for leachate migration, it must be demonstrated to the satisfaction of the department that leachate will only migrate to underlying formations which have no hydraulic continuity with any state waters according to the criteria specified in ARM 17.50.506.

(b) Adequate separation of Group II wastes from underlying or adjacent water must be provided. The extent of the separation required must be established on a case-by-case basis, considering terrain, type of underlying soil formations, and facility design.

(c) The following airport safety requirements apply to all facilities which manage Group II waste:

(i) Facilities may not be located or operated within 10,000 feet (3,048 meters) of any airport runway used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway used by only piston-type aircraft unless the owner or operator can demonstrate to the department's satisfaction that the facility is designed and can be operated so that it does not pose a bird hazard to aircraft. That demonstration must be submitted to the department and the

federal aviation administration (FAA) and placed in the facility's operating record.

(ii) An owner or operator proposing to license a facility or a lateral expansion within a 5 mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the FAA.

(iii) The owner or operator (or applicant in the case of a new license application) must submit copies of the required notifications and responses received from the affected airport and FAA within 30 days of the date they were sent or received.

(d) New disposal units or lateral expansions may not be located in wetlands.

(e) New disposal units or lateral expansions may not be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the department that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the disposal unit and will be protective of human health and the environment.

(f) Class II disposal units or lateral expansions may not be located in seismic impact zones, unless the owner or operator demonstrates to the department that all containment structures, including liners, leachate collection and removal systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(g) Owners or operators of new Class II disposal units, existing Class II disposal units, and lateral expansions located in an unstable area must demonstrate to the department that engineering measures have been incorporated into the unit's design to ensure that the integrity of the structural components of the landfill unit will not be disrupted. The department will consider the following factors, at a minimum, when determining whether an area is unstable:

(i) on-site or local soil conditions that may result in significant differential settling;

(ii) on-site or local geologic or geomorphic features; and

(iii) on-site or local human-made features or events (both surface and subsurface).

(h)(i) Existing facilities that cannot make the demonstration specified in (2)(c) above pertaining to airports, (1)(c) of this rule pertaining to floodplains, or (2)(g) above pertaining to unstable areas, must close by October 9, 1996, in accordance with ARM 17.50.530 and conduct post-closure activities in accordance with ARM 17.50.531.

(ii) The deadline for closure required by (i) above may be extended up to 2 years if the owner or operator demonstrates to the department that:

(A) there is no available waste management alternative;

and

(B) there is no immediate threat to human health and the environment.

(i) Owners and operators should be aware that Montana has local water quality protection districts. This protection program may impose additional requirements on owners or operators of solid waste management systems other than those set forth in this subchapter.

(j) Class III landfills may not be located on the banks of or in a live or intermittent stream or water saturated areas, such as marshes or deep gravel pits which contain exposed ground water.

(k) A Class IV landfill unit may not be located in wetlands or in a 100 year floodplain. (History: 75-10-204, MCA; IMP, 75-10-204, MCA, Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97.)

17.50.506 DESIGN CRITERIA FOR LANDFILLS (1) New Class II landfill units and lateral expansions must be constructed:

(a) in accordance with a design approved by the department that ensures that the concentration values listed in Table 1 at the end of this rule will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the department; or

(b) with a composite liner and a leachate collection system meeting the following requirements:

(i) The composite liner shall consist of 2 components. The upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a 2-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60-mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component.

(ii) The leachate collection and removal system must be designed and constructed to maintain less than a 30-cm depth of leachate over the liner.

(2) When approving a design under (1)(a) of this rule, the department shall consider at least the following factors:

(a) the hydrogeologic characteristics of the facility and surrounding land, including depth to ground water, value and uses of the uppermost and any regional aquifers, type, depth, and hydraulic conductivity of soils and lithology below the waste disposal areas;

(b) the climatic factors of the area;

(c) the estimated volume and physical and chemical characteristics of the leachate;

(d) the hydraulic conductivity of the barrier layer;

(e) the barrier layer thickness;

(f) the slope of the barrier layer; and

(g) the hydraulic head on the barrier layer;

(3) A design of a landfill unit pursuant to (1)(a) of this rule must include a leachate collection and removal system and a barrier layer.

(4) The barrier layer must be an engineered improvement that may include, but is not limited to the following:

(a) compacted soil liner as defined in ARM 17.50.502;

(b) geosynthetic clay liners;

(c) soil admixtures;

(d) geomembranes;

(e) polymers;

(f) natural lithology when the uppermost soil layer of the landfill base is recompacted to achieve a minimum final thickness of 12 inches with a hydraulic conductivity of less than or equal to 1×10^{-7} cm/sec; and

(g) variations or combinations of design components

described in this section that achieve compliance with (1)(a) of this rule.

(5) A barrier layer is not required for landfill units at a facility that has a department-approved no migration petition as specified in ARM 17.50.723.

(6) The leachate collection and removal system must be designed and constructed:

(a) to maintain less than a 30 centimeter (12-inch) depth of leachate at any point over the barrier layer or base of the landfill unit; and

(b) When a compacted soil liner or recompacted natural lithology is used as the barrier layer, to ensure that the minimum slope at the base of the overlying leachate collection layer is at least 2% and side slopes do not exceed 33%.

(7) The leachate collection system must be designed with consideration of the following factors and must be approved by the department:

(a) sized to water balance calculations or using other accepted engineering methods approved by the department;

(b) waste type;

(c) slope length;

(d) percent slope;

(e) barrier layer;

(f) hydraulic conductivity of the drainage layer; and

(g) long term performance during the active life and post closure care period.

(8) The leachate removal system must be designed, constructed, and operated to:

(a) allow the leachate collection system to perform as designed;

(b) allow for the safe removal of and treatment of the collected leachate; and

(c) account for potential increased hydraulic head in the removal system.

(9) The returning of leachate to the landfill unit or the recirculation of leachate in the landfill unit may be done only in landfill units that have a composite liner system.

(10) The relevant point of compliance specified by the department must be no more than 150 meters from the waste management unit boundary and must be located on land owned by the owner of the landfill unit.

(11) In determining the relevant point of compliance, the department shall consider at least the following factors:

(a) the hydrogeologic characteristics of the facility and surrounding land;

(b) the volume and physical and chemical characteristics of the leachate;

(c) the quantity, quality, and direction of flow of ground water;

(d) the proximity and withdrawal rate of the ground water users;

(e) the availability of alternative drinking water supplies;

(f) the existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water; and

(g) public health, safety, and welfare effects.

(12) Verification of construction of the final cap, liner, and leachate collection and removal system approved by the department is required by means of construction quality control (CQC) and construction quality assurance (CQA) plans and testing for construction of these elements of design in accordance with submitted specifications.

(13) CQC and CQA plans must be approved by the department.

(14) A report of all CQC and CQA procedures and results of all testing and monitoring provisions performed during construction of the design features for a landfill unit as specified in the approved plans must be submitted to the department and approved in writing before acceptance of waste by a landfill unit is allowed.

(15)(a) Owners or operators of all existing landfill units, new landfill units and lateral expansions that meet the criteria for a small community exemption and are approved by the department are not required to comply with this rule.

(b) Petitions requesting the small community exemption must be in writing and must contain sufficient information for the department to make its determination.

(c) Any change in a facility's compliance with the mandated criteria automatically revokes the exemption and the facility must comply with all applicable requirements in this subchapter.

(d) The department must be notified of any change in the facility's eligibility under the following criteria within 30 days of the change.

(16) The small community exemption will be approved only if all of the following criteria are met:

(a) there is no evidence of existing ground water contamination; and

(b) the landfill receives less than 20 tons per day of all types of solid waste, based on an annual average; and

(c) the landfill is in an area that annually receives less than 25 inches of precipitation; and

(d) the landfill serves a community that has no practicable waste management alternative. For the purposes of this section, the lack of a practicable waste management alternative may be demonstrated by the following:

(i) no access to licensed Class II landfill within 100

miles of the community; and

(ii) the cost per household of using an alternative disposal method, and the cost per household of complying with the requirements of the landfill design and operation distributed over the entire estimated active life of the landfill, will each exceed on an annual basis 1% of the median household income for the service area.

TABLE 1

<u>Chemical</u>	<u>MCL (mg/l)</u>
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloroethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

(17) Landfill units and lateral expansions must be designed, constructed, and operated in a manner to prevent harm to human health and the environment.

(18) Class IV landfill units and lateral expansions must be constructed in accordance with a design approved by the department that ensures that the concentration values listed in Table 1 of this rule will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the department.

(19) A Class IV landfill unit is exempt from liner requirements if:

(a) the department determines, based upon site-specific information such as soil or rock types, average net infiltration or percolation rates, depth to ground water, and contaminant

migration velocities, that the unit does not have the potential to cause ground water contamination during the active, closure, and post closure care periods;

(b) the unit is located at a Class II facility and is monitored by the facility's ground water monitoring system in accordance with this subchapter; or

(c) the unit is located at a Class II facility that meets the requirements of ARM 17.50.723.

(20) Returning leachate to a Class IV landfill unit, or recirculating leachate in the landfill unit may only be done in a landfill unit that has a composite liner system.

(21) The relevant point of compliance for Group IV units is the same as specified in (10) of this rule for Class II units. The requirements of (11) of this rule apply to Class IV units.

(22) At sites where Class IV units require liners and for closure activities at all Class IV units, the CQC/CQA requirements for Class IV units are the same as for Class II units contained in (12), (13) and (14) of this rule.

(23) The requirements of this rule are effective October 9, 1993, except for the existing landfill units and lateral expansions to existing units defined in ARM 17.50.501(4), which must comply by April 9, 1994. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; NEW, 1993 MAR p. 1645, Eff. 10/9/93; AMD, 1993 MAR p. 2672, Eff. 11/11/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97.)

Rule 17.50.507 reserved

17.50.508 APPLICATION FOR SOLID WASTE MANAGEMENT SYSTEM LICENSE Any owner or operator wishing to establish a solid waste management system shall first submit an original application and 3 copies for a license to the department. The application must be signed by the person responsible for the overall operation of the facility. The department shall furnish application forms to interested persons. Such forms shall require at least the following information:

- (1) name and business address of applicant;
- (2) legal and general description and ownership status of the proposed locations, including the land owner's name and address;
- (3) documentation of ownership of the property or documentation demonstrating that the applicant has the right to operate a solid waste management system on the property;
- (4) total acreage of proposed facility;
- (5) population size and centers to be served by the proposed facility;
- (6) name, address, and location of any public airports within 5 miles of the proposed facility;
- (7) location of any lakes, rivers, streams, springs, or bogs, onsite or within 2 miles of the facility boundary;
- (8) facility location in relation to the base floodplain of nearby drainages;
- (9) pertinent water quality information;
- (10) geological, hydrological, and soil information, including at least the following:
 - (a) Class II disposal facilities must submit geological, hydrological, and soil information that includes the following at a minimum:
 - (i) a hydrogeological and soils study as specified in ARM 17.50.705;
 - (ii) types and regional thickness of unconsolidated soils materials;
 - (iii) types and regional thickness of consolidated bedrock materials;
 - (iv) regional and local geologic structure, including bedrock strike and dip, and fracture patterns;
 - (v) geological hazards including but not limited to slope stability, faulting, folding, rockfall, landslides, subsidence, or erosion potential, that may affect the design and operation of the facility for solid waste management;
 - (vi) depth to and thickness of perched ground water zones and uppermost aquifers;
 - (vii) information regarding any domestic wells within one mile of the site boundary, including well location, well depth, depth to water, screened intervals, yields and aquifers tapped;
 - (viii) an evaluation of the potential for impacts to existing surface water and ground water quality from the

proposed facility for solid waste management;

(b) transfer station and Class III and Class IV disposal facility applications must include sufficient soils, hydrologic and geologic information so that the department can evaluate the proposed safety and environmental impact of the proposed design;

(c) a ground water monitoring plan or a demonstration meeting the requirements of ARM 17.50.723 must be submitted for Class IV disposal facilities.

(11) present uses of adjacent lands and the owner's name and current address;

(12) zoning information;

(13) site maps and plans, drawn to a convenient common scale, that show the location and dimensions of any planned excavations, buildings, roads, fencing, access, or other structures proposed on-site;

(14) in addition to the above required site plan, all facilities which manage Group II waste must submit technical design specifications and a site plan that includes the following:

(a) the type, quantity, and location of any material that will be required for use as a daily and intermediate cover over the life of the site and facility;

(b) the type and quantity of any material that will be required for use as liner material or final cover, including its compaction density and moisture content specifications, the design permeability, and construction quality control and construction quality assurance plans;

(c) the location and depth of cut for any liners;

(d) the location and depths of any proposed fill or processing areas;

(e) the location, dimensions, and grades of any surface water diversion structures;

(f) the location and dimensions of any surface water containment structures, including those designed to impound contaminated runoff leachate, sludge, or liquids for evaporative treatment;

(g) the location of any proposed monitoring points for surface water, ground water quality, and explosive gases;

(h) the location, type, and dimensions of any fencing to be placed on-site;

(i) the final contours and grades of any fill surface after closure;

(j) the location of each discrete phase of development;

(k) the design details and specifications of any final cap, liner, and leachate collection and removal system, including construction quality control and assurance plans and testing for construction of these elements of design;

(l) a location map showing all the proposed structures and areas for unloading, baling, compacting, storage, and loading,

including the dimensions, elevations, and floor plans for these structures and areas, including the general process flow; and

(m) the design details and specifications of the facility's drainage, septic and water supply systems;

(15) other maps, drawings related to the design or environmental impact of the proposed facility;

(16) name and address of individual operator;

(17) proposed operation and maintenance plan;

(18) other information necessary for the department to comply with the Montana Environmental Policy Act (MEPA), Title 75, chapter 1, parts 1-3, MCA;

(19) closure and post-closure care plans; and

(20) financial assurance required by ARM 17.50.540. (History: 75-10-204, 75-10-221, MCA; IMP, 75-10-204, 75-10-221, MCA, Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97.)

17.50.509 OPERATION AND MAINTENANCE PLAN REQUIREMENTS

(1) Each proposed solid waste management system will be evaluated on a case-by-case basis, taking into consideration the physical characteristics of the system, the types and amounts of wastes, and the operation and maintenance plan for that system.

(2) The operation and maintenance plan shall include:

(a) if for use by the public, what days and times the components of the system will be open;

(b) how access and traffic will be restricted or controlled;

(c) proposed equipment the system will utilize;

(d) general description of the proposed solid waste management system;

(e) maintenance schedule concerning solid waste handling and disposal;

(f) provision for litter control, if applicable;

(g) types of waste the proposed facility will accept; and

(h) plan for reclamation of the disposal facility and the land's ultimate use as required under ARM 17.50.530.

(i) any methane monitoring plans required under ARM 17.50.511;

(j) any ground water monitoring plan required under ARM 17.50.701, et seq.; and

(k) any plans required for composting or for handling of special waste streams. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253.)

17.50.510 GENERAL OPERATIONAL AND MAINTENANCE REQUIREMENTS

--SOLID WASTE MANAGEMENT SYSTEMS (1) Any person who maintains or operates a solid waste management system shall maintain and operate such system in conformance with the requirements of this rule, the plan of operation and maintenance approved by the department, all local zoning, system planning, building, and protective covenant provisions, and any other legal requirements that may be in effect.

(2) Open burning at all facilities is prohibited unless a permit has been obtained from the department.

(3) Open burning must be conducted in accordance with rules adopted by the department regulating open burning found in ARM 17.8.601, 17.8.604 through 17.8.606, 17.8.610 through 17.8.612, and 17.8.615.

(4) Dumping of solid waste must be confined to areas within the disposal facility that can be effectively maintained and operated in accordance with this subchapter. This must be controlled by supervision, fencing, signs or similar means approved by the department.

(5) Owners or operators of all solid waste management systems must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

(6) Effective means shall be taken to control litter at solid waste storage and disposal facilities.

(7) Owners or operators of all solid waste management systems must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(8) Salvaging of materials at all facilities is expressly prohibited unless the owner or operator demonstrates to the department's satisfaction that it can be done in a manner protective of human health and the environment.

(9) The department hereby adopts and incorporates by reference ARM 17.8.601, 17.8.604 through 17.8.606, 17.8.610 through 17.8.612, and 17.8.615, which set standards for open burning. Copies of the above are available from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901 [(406)444-1430]. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253.)

17.50.511 SPECIFIC OPERATIONAL AND MAINTENANCE REQUIREMENTS

--SOLID WASTE MANAGEMENT SYSTEMS (1)(a) All Class II facilities using landfilling methods shall compact and cover solid waste with a layer of at least 6 inches of approved earth cover material at the end of each operating day or at more frequent intervals if necessary to control disease vectors, fires, odors, blowing litter, and scavenging. Alternative daily cover materials such as geotextile fabrics, foams, compost, or other materials may be used in place of the 6 inches of approved earthen cover material only when approved by the department. The use of alternative daily cover materials must be done under a plan of operations approved of in advance by the department. The plan of operations for the use of alternative daily cover materials must include provisions for the application of 6 inches of approved earthen cover material at least once per week. The owner or operator must demonstrate to the department that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. Any portion of a Class II landfill unit that will not receive additional waste within 90 days must have an intermediate cover of at least 1 foot of approved earthen materials. These steps must be taken unless the department is satisfied that the licensee has shown good cause for not covering.

(b) EPA's 1972 publication, "Sanitary Landfill Design and Operation", (#SW-65ts) shall be used as the general landfill design and operation manual for purposes of this rule. The department may develop or adopt guidelines for other solid waste disposal methods and procedures. Semi-solids should be mixed with other solid waste to prevent localized leaching; or separate, specialized disposal areas should be developed.

(c) Landfills must be fenced to prevent unauthorized access and must be supervised when open.

(d) Where transfer stations are utilized as part of a management system for Group II solid wastes, all containers must be maintained and kept in a sanitary manner and emptied at least once a week.

(e) Owners or operators of all Class II landfill units must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes or polychlorinated biphenyls (PCB) wastes. This program must include, at a minimum:

(i) random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes;

(ii) records of any inspections;

(iii) training of facility personnel to recognize regulated hazardous waste and PCB wastes; and

(iv) notification of the department if a regulated

hazardous waste or PCB waste is discovered at the facility.

(f) Owners or operators of all Class II landfill units must ensure that:

(i) the concentration of methane gas generated by the facility does not exceed 25% of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

(ii) the concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.

(g) Owners or operators of all Class II landfill units must implement a department approved routine methane monitoring program that ensures that the standards of (f) above are met and that meets the following requirements:

(i) The type and frequency of monitoring must be determined based on the following factors:

(A) soil conditions;

(B) the hydrogeologic conditions surrounding the facility;

(C) the hydraulic conditions surrounding the facility; and

(D) the location of facility structures and property boundaries.

(ii) The minimum frequency of monitoring must be quarterly.

(h) If methane gas levels exceeding the limits specified in (f) above are detected, the owner or operator must:

(i) immediately take all necessary steps to ensure protection of human health and notify the state director;

(ii) within 7 days of detection, place in the operating record and notify the department in writing of the methane gas levels detected and a description of the steps taken to protect human health; and

(iii) within 60 days of detection, implement a department approved remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the department that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

(i) Owners or operators of all solid waste management systems must ensure that the units do not violate any applicable requirements developed under a state implementation plan (SIP) approved or promulgated by the EPA administrator pursuant to section 110 of the Clean Air Act, as amended.

(j) Owners or operators of all Class II disposal units must design, construct, and maintain:

(i) a run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

(ii) a run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(k) Run-off from the active portion of the disposal unit must be handled in accordance with (l) below.

(l) Class II disposal units may not:

(i) cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the federal Clean Water Act, including, but not limited to, the national pollutant discharge elimination system (NPDES) requirements, pursuant to section 402 or the Montana pollutant discharge elimination system (MPDES) requirements found in ARM 17.30.1301, et seq.;

(ii) cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under section 208 or 319 of the federal Clean Water Act, as amended.

(m)(i) Bulk or noncontainerized liquid waste may not be placed in Class II disposal units unless:

(A) approved of in advance by the department; and

(B) the waste is either:

(I) household waste other than septic waste; or

(II) leachate or gas condensate derived from the disposal unit and the disposal unit, whether it is a new or existing disposal or lateral expansion, and is designed with a composite liner and leachate collection system as described in ARM 17.50.506.

(ii) In order to obtain this exemption, the owner or operator must place a demonstration in the operating record showing that the conditions of (m)(i)(B)(II) above have been met and notify the department for prior approval.

(n) Containers holding liquid waste may not be placed in a Class II disposal unit unless:

(i) the container is a small container similar in size to that normally found in household waste;

(ii) the container is designed to hold liquids for use other than storage; or

(iii) the waste is household waste.

(o) Class II landfill facilities must weigh or otherwise accurately record all volumes of waste entering the facility.

(p) The owner or operator of a Class II disposal unit must record and retain at the facility or at an alternative location approved by the department, an operating record containing the following information as it becomes available:

(i) any location restriction demonstration required under this subchapter;

(ii) inspection records, training procedures, and notification procedures required under this subchapter;

(iii) gas monitoring results from monitoring and any remediation plans required by this subchapter;

(iv) any design documentation for construction or the

placement of leachate or gas condensate in a landfill unit as required under this subchapter;

(v) any demonstration, certification, finding, monitoring, testing, or analytical data required by department ground water monitoring regulations found in ARM 17.50.701, et seq.;

(vi) closure and post-closure care plans and any monitoring, testing, or analytical data required by this subchapter;

(vii) any cost estimates and financial assurance documentation required by this subchapter;

(viii) any information demonstrating compliance with and approval of the small community exemption; and

(ix) any waste quantity records required under this subchapter.

(q) The owner/operator must notify the department when the documents from (p) above have been placed in or added to the operating record, and all information contained in the operating record must be furnished to the department and be made available at all reasonable times for inspection by the department and the public.

(i) Notification and department approval is required if the operating record is to be kept at a location other than the licensed facility.

(ii) The operating record is considered to be part of the solid waste management facility, regardless of its actual physical location, and must be made available at all reasonable times for inspection by the department and the public.

(2) Although Class III landfills are not required to cover wastes in disposal areas by earth materials daily, the wastes must be covered at least quarterly with 6 inches of a department approved earthen cover material.

(3) Class IV solid waste units and components thereof must be designed, constructed, maintained, and operated so as to control litter, insects, rodents, odor, aesthetics, residues, waste water, leachate, and air pollutants.

(a) Although daily cover is not required at Class IV units, an approved cover must be applied a minimum of every 3 months unless more frequent cover is needed to control litter.

(b) The plan of operations at Class IV landfill units must exclude Group II waste. Conditionally exempt small quantity generator wastes must be removed to the greatest extent practicable. Liquid paints, solvents, glues, resins, dyes, oils, pesticides, and other household hazardous waste must be removed from buildings prior to demolition.

(c) The following requirements also apply to Class IV units:

(i) fencing and staffing, (1)(c) of this rule;

(ii) waste screening, (1)(e) of this rule;

- (iii) explosive gas control, (1)(f) of this rule;
- (iv) air pollution, (1)(i) of this rule;
- (v) surface water pollution, (1)(k) and (l) of this rule;
- (vi) bulk liquids, (1)(m) and (n) of this rule, and;
- (vii) record keeping, (1)(o), (p) and (q) of this rule.

(4) Resource recovery and solid waste treatment facilities and components thereof shall be designed, constructed, maintained, and operated so as to control litter, insects and rodents, odor, aesthetics, residues, waste water treatment, and air pollutants.

(5) Subsections (1)(e) and (g) of this rule are effective October 9, 1993, except that the application of those subsections to the existing landfill units and lateral expansions to existing units defined in ARM 17.50.501(4) is delayed until April 9, 1994.

(6) The department hereby adopts and incorporates by reference:

(a) the standards governing water pollution discharges contained in the federal Clean Water Act and ARM 17.30.1301, et seq.; and

(b) the standards governing nonpoint source pollutant discharges contained in Montana water quality management plans approved pursuant to sections 208 or 319 of the federal Clean Water Act.

(c) Copies of the federal Clean Water Act, water quality management plans, and ARM 17.30.1301, et seq., may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901 [(406)444-1430]. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; AMD, 1993 MAR p. 2672, Eff. 11/11/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 1031, Eff. 6/24/97.)

Rule 17.50.512 reserved

17.50.513 PROCESSING OF SOLID WASTE MANAGEMENT SYSTEM LICENSE APPLICATION (1) The department will review each submitted application to insure that it is completed. If additional information is required, the department will notify the applicant in writing and will postpone processing the application until the additional information requested is received and the application is complete. If the requested additional information is not received within 90 days after the applicant has been notified, a new application must be submitted.

(2) Within 15 days after receipt of the completed application, the department shall notify in writing the local health officer in the county where the proposed solid waste management system will be located. The department shall review the completed application and other relevant information and make a proposed decision based on the applicant's apparent ability to comply with the act and this subchapter.

(3) A public notice will then be prepared by the department to explain its proposed decision. It shall be circulated in the following manner: one copy to the applicant, and 3 copies shall be mailed to the public health officer along with instructions that they be posted at the nearest post office and 2 other public buildings serving the geographical area of the proposed system. At least 1 news release shall be prepared and sent by the department to an area newspaper.

(4) The purpose of the public notice is to inform the public and seek their views on the proposed license. The notice shall state the name and address of the applicant, the proposed location of the solid waste management facility, and the department's proposed decision. The public shall be informed that it has 30 days from the date of the public notice to submit written comments to the department concerning the license application. Interested persons may obtain copies of the completed application and the department's proposed decision, upon request, by enclosing the copying costs.

(5) After the comment period has expired, the department will make its final decision and then notify in writing the local health officer, the applicant and any other interested persons who have requested to be notified. If the department decides to issue the license, the local health officer has up to 15 days within which to validate the license with his signature.

If he refuses to validate the license, he must notify the department, the applicant and any other interested persons in writing. His decision must be based only on whether the application complies with the act and this subchapter. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; TRANS, from DHES, 1995 MAR p. 2253.)

17.50.514 APPEAL OF DENIAL OR REVOCATION (1) If the department's final decision is to deny the license application or to revoke an existing license to operate a solid waste management system, the applicant (or licensee) and the local health officer have an opportunity to appeal the decision to the board. The department shall inform them of this right in the letter of denial or revocation. An appeal, if one is sought, must be filed with the board within 30 days after the notice of denial or revocation of license is received.

(2) If the department issues a license but the local health officer refuses to validate it, the applicant or any person aggrieved by the local health officer's decision may appeal the local health officer's decision to the board. An appeal must be filed within 30 days after receipt of written notice of the local health officer's decision.

(3) The act does not provide third parties with the right of appeal to the board from a decision made by the department to issue, revoke, or deny a license. (History: 75-10-204, MCA; IMP, 75-10-204, 75-10-223, 75-10-224, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253.)

17.50.515 DURATION OF LICENSE (1) Solid waste management system licenses are valid through June 30 following the date of issuance, unless earlier surrendered by the licensee or revoked by the department in accordance with 75-10-224, MCA.

(2) Licenses may be renewed on an annual basis by submission of an application for renewal and payment of fees as specified in ARM 17.50.410.

(3) Licenses are not transferable to other locations.

(4) Facilities must be constructed and operated within 5 years of the original date of license issuance or else must be subject to review and reapproval by the department prior to construction or operation, regardless of whether license renewal fees have been paid. (History: 75-10-204, MCA; IMP, 75-10-204, 75-10-221, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253.)

Rules 17.50.516 through 17.50.522 reserved

17.50.523 TRANSPORTATION (1) Solid waste must be transported in such a manner so as to prevent its discharge, dumping, spilling, or leaking from the transport vehicle. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; TRANS, Eff. 7/28/78; TRANS, from DHES, 1995 MAR p. 2253.)

Rule 17.50.524 reserved

17.50.525 INSPECTIONS (1) The department has authority under 75-10-205, MCA, to conduct inspections of solid waste management systems at reasonable hours upon presentation of appropriate credentials. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; TRANS, Eff. 7/28/78; TRANS, from DHES, 1995 MAR p. 2253.)

17.50.526 ENFORCEMENT (1) If after an inspection the department determines that violation of the act or this subchapter is occurring, it shall notify the licensee of the nature of the violation.

(2) Depending on the severity of the violation, the department may seek a compliance schedule from the applicant or initiate proceedings to revoke the license. The department may also, through the attorney general or appropriate county attorney, seek to enjoin the licensee, or collect a criminal penalty.

(3) The department may seek a civil penalty from persons who store, treat, transport or dispose of waste in violation of this subchapter or Title 75, chapter 10, part 2, MCA. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, 1977 MAR p. 1170, Eff. 12/24/77; TRANS, Eff. 7/28/78; AMD, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253.)

Rules 17.50.527 through 17.50.529 reserved

17.50.530 CLOSURE REQUIREMENTS FOR LANDFILLS (1) Closure criteria for Class II landfills are as follows:

(a) Owners or operators of all Class II landfill units must install a final cover system that is designed to minimize infiltration and erosion. The final cover system must be designed and constructed to:

(i) minimize infiltration through the closed unit by the use of an infiltration layer that contains a minimum 18 inches of earthen material and have a permeability less than or equal to the permeability of any bottom liner, barrier layer, or natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less;

(ii) minimize erosion of the final cover by the use of a seed bed layer that contains a minimum of 6 inches of earthen material that is capable of sustaining native plant growth and protecting the infiltration layer from frost effects and rooting damage; and

(iii) revegetate the final cover with native plant growth within 1 year of placement of the final cover. The department may approve alternative revegetation plant species or an extension in the time requirement for revegetation.

(b) The department may approve an alternative final cover design that includes:

(i) an infiltration layer that achieves reduction in infiltration at least equivalent to the infiltration layer specified in (1)(a)(i) and (ii) above; and

(ii) an erosion layer that provides protection from wind and water erosion equivalent to the erosion layer specified in (1)(a)(ii) and (iii) above.

(c) The owner or operator must prepare a written closure plan that describes the steps necessary to close all landfill units at any point during their active life in accordance with the cover design requirements in (1)(a) or (b) above, as applicable. The closure plan, at a minimum, must include the following information:

(i) a description of the final cover, designed in accordance with (1)(a) or (b) above, and the methods and procedures to be used to install the cover;

(ii) an estimate of the area of the Class II landfill that the department determines to be the largest active portion in the facility requiring a final cover as required under (1)(a) above during the active life of the facility;

(iii) an estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(iv) a schedule for completing all activities necessary to satisfy the closure criteria in (1)(a) above.

(d) The owner or operator must submit a closure plan to the department for approval and place it in the operating record no later than October 9, 1993, or at the time of application for

license for a new landfill, the placement of wastes in a new Class II landfill unit, or the lateral expansion of an existing unit.

(e) Prior to beginning closure of each landfill unit as specified in (1)(a) or (b) above, an owner or operator must notify the department that a notice of the intent to close the unit has been placed in the operating record.

(f) The owner or operator must begin closure activities of each Class II landfill unit no later than 30 days after the date on which the Class II landfill unit receives the known final receipt of wastes or, if the Class II landfill unit has remaining capacity and there is a reasonable likelihood that the Class II landfill unit will receive additional wastes, no later than 1 year after the most recent receipt of wastes. Extensions beyond the 1-year deadline for beginning closure may be granted by the department if the owner or operator demonstrates that the Class II landfill unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed Class II landfill unit. Any portion of a Class II landfill unit that will not receive additional waste within 90 days must have an intermediate cover of at least 1 foot of approved earthen materials.

(g) The owner or operator of all Class II landfill units must complete closure activities of each Class II unit in accordance with the closure plan within 180 days following the beginning of closure as specified in (1)(f) above. Extensions of the closure period may be granted by the department if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and he has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed Class II landfill unit.

(h) Following closure of each Class II landfill unit, the owner or operator must notify the department that closure has been completed in accordance with the closure plan. A certification, signed by an independent registered professional engineer, or the department, verifying that closure has been completed in accordance with the closure plan, must be placed in the operating record. Upon receipt of the notification of closure the department will:

(i) place the landfill in interim closure status and hold in abeyance any fees due under ARM 17.50.410 until closure compliance is verified by the department; and

(ii) schedule an inspection to verify closure plan compliance.

(i) Following closure of all Class II landfill units, the owner or operator must record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search, and notify the department

that the notation has been recorded and a copy has been placed in the operating record. The notation on the deed must in perpetuity notify any potential purchaser of the property that:

- (i) the land has been used as a landfill facility; and
- (ii) its use is restricted under ARM 17.50.531(1)(c)(iii).
- (j) The owner or operator may request permission from the department to remove the notation from the deed if all wastes are removed from the facility.

(2) Class III landfill units must be closed under a department approved plan that includes at a minimum:

- (a) two feet of final cover; and
- (b) grading and seeding to prevent erosion.
- (c) the deed notation specified in (1)(i)(i) of this rule, unless all wastes are removed from the facility and the owner or operator requests permission from the department to remove the notation from the deed.

(3) The closure requirements for Class IV units are as follows:

(a) Owners or operators of all Class IV landfill units must install a final cover system that is designed to minimize infiltration and erosion. The final cover system must be designed and constructed to:

(i) minimize infiltration through the closed unit by the use of an infiltration layer that contains a minimum 18 inches of earthen material and has a permeability no greater than 1×10^{-5} cm/sec;

(ii) minimize erosion of the final cover by the use of a seed bed layer that contains a minimum of 6 inches of earthen material that is capable of sustaining native plant growth and protecting the infiltration layer from frost effects and rooting damage; and

(iii) revegetate the final cover with native plant growth within 1 year of placement of the final cover.

(b) The department shall approve an alternative final cover design if it includes:

(i) an infiltration layer that achieves reduction in infiltration at least equivalent to the infiltration layer specified in (3)(a)(i) and (ii) above; and

(ii) an erosion layer or alternative revegetation plant species that provide protection from wind and water erosion equivalent to the erosion layer specified in (3)(a)(ii) and (iii) above.

(c) The owner or operator must prepare a written closure plan that describes the steps necessary to close all landfill units at any point during their active life in accordance with the cover design requirements in (3)(a) or (b) above, as applicable. The closure plan, at a minimum, must include the following information:

- (i) a description of the final cover, designed in

accordance with (3)(a) or (b) above, and the methods and procedures to be used to install the cover;

(ii) an estimate of the area of the Class IV landfill unit that the department determines to be the largest active portion in the facility ever requiring a final cover as required under (3)(a) above during the active life of the facility;

(iii) an estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(iv) a schedule for completing all activities necessary to satisfy the closure criteria in (3)(a) above.

(d) The owner or operator must submit a closure plan to the department for approval and place it in the operating record when applying for a license for a Class IV landfill, before placing wastes in a Class IV unit at a licensed Class II facility, and/or before the lateral expansion of an existing unit.

(e) Prior to beginning closure of each landfill unit, an owner or operator must notify the department that a notice of the intent to close the unit has been placed in the operating record.

(f) The owner or operator must begin closure activities of each Class IV landfill unit no later than 30 days after the date on which the landfill unit receives the known final receipt of wastes or, if the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than 1 year after the most recent receipt of wastes. Extensions beyond the 1-year deadline for beginning closure may be granted by the department if the owner or operator demonstrates that the unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed unit. Any portion of a Class IV landfill unit that will not receive additional waste within 180 days must have an intermediate cover of at least 1 foot of approved earthen materials.

(g) An owner or operator of Class IV landfill units must complete closure of each unit in accordance with the closure plan within 180 days following the beginning of closure as specified in (3)(f) above. Extensions of the closure period may be granted by the department if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed Class IV landfill unit. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; NEW, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 689, Eff. 4/22/97; AMD, 1997 MAR p. 1031, Eff. 6/24/97.)

17.50.531 POST-CLOSURE CARE REQUIREMENTS FOR CLASS II LANDFILLS (1) Post closure care for Class II landfills:

(a) Following closure of each Class II landfill unit, the owner or operator must conduct post-closure care. Post-closure care must be conducted for 30 years, except as provided under (b) below, and consist of at least the following:

(i) maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(ii) maintaining and operating the leachate collection system in accordance with the requirements in ARM 17.50.506. The department may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(iii) monitoring the ground water in accordance with the requirements of ARM Title 17, chapter 50, subchapter 7, and maintaining the ground water monitoring system, if applicable; and

(iv) maintaining and operating the gas monitoring system in accordance with the requirements of ARM 17.50.511.

(b) The length of the post-closure care period may be:

(i) decreased by the department if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the department; or

(ii) increased by the department if the department determines that the lengthened period is necessary to protect human health and the environment.

(c) The owner or operator of all Class II landfill units must prepare a written post-closure plan that includes, at a minimum, the following information:

(i) a description of the monitoring and maintenance activities required in (a) above for each Class II landfill unit, and the frequency at which these activities will be performed;

(ii) name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(iii) a description of the planned uses of the property during the post-closure period. Post-closure use of the property must not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in these rules. The department may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of

waste, will not increase the potential threat to human health or the environment.

(d) The owner or operator must submit to the department a post-closure plan for approval and place a copy of that plan in the operating record no later than October 9, 1993, or by the initial receipt of waste, whichever is later.

(e) Following completion of the post-closure care period for each Class II landfill unit, the owner or operator must submit to the department a certification, signed by an independent registered professional engineer for approval by the department, verifying that post-closure care has been completed in accordance with the post-closure plan. A copy of the approved document must be placed in the operating record.

(2)(a) The department hereby adopts and incorporates by reference:

(i) the ground water monitoring requirements contained in ARM Title 17, chapter 50, subchapter 7; and

(ii) ARM 17.50.511, containing requirements for maintaining and operating gas monitoring systems.

(b) Copies of the above rules may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901, [(406)444-1430]. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; NEW, 1993 MAR p. 1645, Eff. 10/9/93; TRANS, from DHES, 1995 MAR p. 2253.)

Rules 17.50.532 through 17.50.539 reserved

17.50.540 FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS II LANDFILLS (1) The requirements of this rule apply to owners and operators of all Class II landfill units, except owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States. Subdivisions of state government, such as counties, cities or towns, whose debts and liabilities are not directly the debts and liabilities of the state, are subject to this rule.

(a) The requirements of this rule are effective April 9, 1997, except:

(i) small, dry or remote landfills which meet the "small community exemption" criteria set forth in ARM 17.50.506, have until October 9, 1997, to comply; and

(ii) the department may waive financial assurance requirements for up to 1 year until April 9, 1998, for cause, if the owner or operator demonstrates to the department=s satisfaction:

(A) that the April 9, 1997, effective date does not provide sufficient time to comply with the requirements of this rule; and

(B) that such a waiver will not adversely affect human health and the environment.

(2) The following financial assurance for closure is required:

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the area of the Class II landfill that the department determines to be the largest active portion in the facility requiring a final cover as required under ARM 17.50.530 during the active life of the facility in accordance with the closure plan. The owner or operator must submit a copy to the department and place the estimate in the operating record.

(i) The cost estimate must equal the cost of closing the largest active portion during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see ARM 17.50.530(1)(c)(ii)).

(ii) During the active life of the Class II landfill unit, the owner or operator must annually adjust the closure cost estimate for inflation and any other changes and submit this information to the department as part of the annual report required under ARM 17.50.412.

(iii) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under (2)(b) below if changes to the closure plan or Class II landfill unit conditions increase the maximum cost of closure at any time during the remaining active life.

(iv) The owner or operator may reduce the closure cost

estimate and the amount of financial assurance provided under (2)(b) below if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the Class II landfill unit. The owner or operator must obtain the approval of the department for the reduction of the closure cost estimate and the amount of financial assurance required. Copies of the demonstration and department approval must be placed in the operating record.

(b) The owner or operator of each Class II landfill unit must establish financial assurance for closure of the Class II landfill unit in compliance with (5) of this rule. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with ARM 17.50.530(1)(h) and (i).

(3) The following financial assurance for post-closure care must be provided:

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the Class II landfill unit in compliance with the post-closure plan developed under ARM 17.50.531. The post-closure cost estimate used to demonstrate financial assurance in (b) below must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must submit a copy of the estimate to the department and place a copy in the operating record. Estimates must meet the following requirements:

(i) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.

(ii) During the active life of the Class II landfill unit and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

(iii) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under (b) below if changes in the post-closure plan or Class II landfill unit conditions increase the maximum costs of post-closure care.

(iv) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under (b) below if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must obtain approval from the department for the reduction of the post-closure cost estimate and the amount of financial assurance and place a copy of the justification in the operating record.

(v) Any changes required above under (ii), (iii), or (iv)

above must be reported to the department as part of the report required under ARM 17.50.412.

(b) The owner or operator of each Class II landfill unit must establish, in a manner in accordance with (5) of this rule, financial assurance for the costs of post-closure care as required under ARM 17.50.531. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with ARM 17.50.531(1)(e).

(4) The following financial assurance for corrective action must be provided:

(a) An owner or operator of a Class II landfill unit required to undertake a corrective action program under ARM 17.50.710 must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under ARM 17.50.710. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must submit the estimate to the department for approval and place a copy in the operating record. The estimate must meet the following requirements:

(i) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with ARM 17.50.710(8)(f).

(ii) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under (b) below if changes in the corrective action program or Class II landfill unit conditions increase the maximum costs of corrective action.

(iii) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under (b) below if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must receive approval from the department for the reduction of the corrective action cost estimate and the reduction in the amount of financial assurance. The justification for the reduction of the corrective action cost estimate and the amount of financial assurance must be placed in the operating record.

(b) The owner or operator of each Class II landfill unit required to undertake a corrective action program under ARM 17.50.710, must establish, in a manner in accordance with this rule, financial assurance for the most recent corrective action program. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with ARM 17.50.710(8)(f) and (g).

(5) The mechanisms used to demonstrate financial assurance

under this rule must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators must choose from the options specified in (a)-(g) below.

(a)(i) An owner or operator may satisfy the requirements of this rule by establishing a trust fund which conforms to the requirements of this rule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be placed in the facility's operating record.

(ii) Payments into the trust fund must be made annually by the owner or operator over the remaining life of the Class II landfill facility, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. These periods are referred to as the pay-in periods.

(iii) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, divided by the number of years in the pay-in period as defined in (ii) above. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = (\text{CE} - \text{CV}) / Y$$

where CE is the current cost estimate for closure or postclosure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(iv) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, divided by the number of years in the corrective action pay-in period as defined in (ii) above. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = (\text{RB} - \text{CV}) / Y$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining on the pay-in period.

(v) The initial payment into the trust fund must be made

before the initial receipt of waste or before the applicable effective date of this section, as specified in (1)(b) above, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 17.50.710.

(vi) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in (5)(f) of this rule, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of (5)(a) above, as applicable.

(vii) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is approved by the department. The owner or operator must provide the department with the documentation of the justification for reimbursement for approval and records of any reimbursement.

(viii) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this section or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of (2)(b), (3)(b), or (4)(b) of this rule.

(b) A surety bond may be used to guarantee payment or performance under the following circumstances:

(i) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond must be effective before the initial receipt of waste or before the applicable effective date of this section, as specified in (1)(b) of this rule, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 17.50.710. The owner or operator must submit a copy of the bond to the department and place a copy in the operating record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the US department of the treasury and licensed to do business in Montana.

(ii) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure care, or corrective action cost estimate, whichever is applicable, except as provided in (5)(g) below.

(iii) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(iv) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of (5)(a) except the requirements for initial payment and subsequent annual payments specified in (5)(a)(ii)-(v) above.

(v) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.

(vi) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this section.

(vii) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with (2)(b), (3)(b), or (4)(b) of this rule.

(c)(i) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section. The letter of credit must be effective before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 17.50.710. The owner or operator must supply the department with a copy of the letter of credit and place a copy of the letter of credit in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(ii) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.

(iii) The letter of credit must be irrevocable and issued for a period of at least 1 year in an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever is applicable, except as provided in (5)(a) above. The letter of credit must provide that the

expiration date will be automatically extended for a period of at least 1 year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator must obtain alternate financial assurance.

(iv) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this rule or if the owner or operator is released from the requirements of this rule in accordance with (2)(b), (3)(b), or (4)(b) of this rule.

(d)(i) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this subsection (d). The insurance must be effective before the initial receipt of waste or before the effective date of this rule (April 9, 1994), whichever is later. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in 1 or more states, specifically including Montana. Proof of insurance must be supplied to the department.

(ii) The closure or post-closure care insurance policy must guarantee that funds will be available to close the Class II landfill unit whenever final closure occurs or to provide post-closure care for the Class II landfill unit whenever the post-closure care period begins, whichever is applicable. The policy must also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(iii) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in (5)(a) above. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(iv) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record and written approval is received from the department in advance. The owner or operator

must file the documentation of the justification for reimbursement with the department and place it in the operating record. Notice that reimbursement has been received must also be filed with the department and placed in the operating record.

(v) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(vi) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in this section.

(vii) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon-issue yield announced by the US treasury for 26-week treasury securities.

(viii) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this subsection (d) or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of (2)(b), (3)(b), or (4)(b) of this rule.

(e) Local governmental entities who are owners or operators may satisfy the requirements of this subsection (e) through their taxing and bonding authority as long as there is a commitment by local governmental entity or entities, approved by the department, that meets criteria specified in (5)(h) below. A demonstration must be made to the department and placed in the operating record, of the ability of the governmental entity or entities to fully fund liabilities under this section. Such a demonstration should include, but is not limited to:

- (i) excess bonding capability available;
- (ii) bond rating of the entity or entities;
- (iii) excess taxation capability available under any governmental tax limitation laws;
- (iv) voter prior approval of any tax increases, if

required; and

(v) any other information that will make it possible for the department to accurately assess the ability to meet the criteria specified in (5)(h) below.

(f) An owner or operator may satisfy the requirements of this rule by obtaining any other mechanism that meets the criteria specified in (5)(h) below, and that is approved by the department.

(g) An owner or operator may satisfy the requirements of this rule by establishing more than 1 financial mechanism per facility. The mechanisms must be as specified in (5)(a)-(f) above, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling, or grandparent may not be combined if the financial statements of the 2 firms are consolidated.

(h) The language of the mechanisms listed in (5)(a)-(f) above must ensure that the instruments satisfy the following criteria:

(i) the financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(ii) the financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(iii) the financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of ARM 17.50.710, until the owner or operator is released from the financial assurance requirements under (2)(b), (3)(b), or (4)(b) of this rule.

(iv) The financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; NEW, 1993 MAR p. 1645, Eff. 4/9/94; AMD, 1993 MAR p. 2672, Eff. 11/11/93; AMD, 1995 MAR p. 665, Eff. 4/28/95; TRANS, from DHES, 1995 MAR p. 2253; AMD, 1997 MAR p. 689, Eff. 4/22/97.)

Rule 17.50.541 reserved

17.50.542 FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS IV

LANDFILLS (1) Prior to licensure, a Class IV facility must financially assure, with a department approved mechanism, the costs of third party closure, post closure care, and corrective action for known releases at the facility at a time when such activities would be the most expensive. Such financial assurance must ensure that requisite funds will be available whenever needed. The amount of the financial assurance must be reviewed, and adjusted if needed, as part of the annual license application renewal process. Allowable mechanisms for financial assurance include:

- (a) surety bonds;
- (b) trust funds;
- (c) letters of credit;
- (d) insurance; and
- (e) any other department approved mechanism or combination of mechanisms. (History: 75-10-204, MCA; IMP, 75-10-204, MCA; NEW, 1997 MAR p. 1031, Eff. 6/24/97.)

